

Filed for intro on 02/22/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House No. HB1703  
By Williams

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 31, relative to underground utilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated 65-31-102, is amended by adding the following new definition:

( ) "Member operator" means any person who furnishes or transports materials or services by means of an underground facility and who elects to participate as a member of a one-call notification center for any portion of the territory served by the person.

SECTION 2. Tennessee Code Annotated 65-31-107, is amended by deleting the section in its entirety and by substituting instead the following:

65-31-107. Operator associations for mutual receipt of notifications. - (a) Operators may form and operate a one call service providing for mutual receipt of notifications of excavation or demolition operations, pursuant to Section 65-31-106, in a defined geographic area. A one-call service that provides such service on behalf of its member operators having underground utilities in Tennessee shall file with the register of deeds of the county in which those utilities are located, the toll-free telephone number and address of the one-call service, a description of the geographic area

served by the one-call service, and a list of the names and addresses of all member operators receiving such services from the one-call service.

(1) In the event any person violates Section 65-31-106, and subsequently, whether by himself or through his employees, contractors, subcontractors, or agents, performs an excavation or demolition which damages an underground utility or a member operator, it shall be rebuttably presumed that such person was negligent. Such person, if found liable, shall be liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

(2) Obtaining information as to the location of any underground facility from the member operator as required by this act does not excuse any excavator from performing an excavation or demolition in a careful and prudent manner, based on accepted engineering and construction practices, nor does it excuse such excavator from liability for any damage or injury resulting from any excavation or demolition.

(3) When an excavator knows or should know of the presence of an underground facility, he shall make reasonable efforts to contact the person who owns or operates that facility prior to commencing an excavation or demolition, regardless of whether that person is a member operator.

(b) If, after receiving proper notice, a member operator fails to discharge a duty imposed by the provisions of this act and an underground facility of such member operator is damaged by an excavator who has complied with the provisions of this act, as a proximate result of the member operator's failure to discharge such duty, such excavator shall not be liable for such damage and the member operator, if found liable, shall be liable to such person for the total cost of any loss or injury to any person or damage to equipment resulting from the member operator's failure to comply with this act. Any damage or loss of revenue and loss of use shall not exceed \$500,000 per

affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

(c) If, after receiving proper notification, a one-call system fails to discharge its duties, resulting in damage to any underground facility, the system, if found liable, shall be liable to all parties, as defined in this act. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.